



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Psychology, Department of Health Professions
VAC Chapter Number:	18 VAC 125-30-10 et seq.
Regulation Title:	Regulations Governing the Certification of Sex Offender Treatment Providers
Action Title:	Periodic Review
Date:	February 18, 2002

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

Amendments to regulation are proposed as a result of the Board's review of regulations pursuant to Executive Order 25. Amendments will make the miscellaneous fees consistent with other professions regulated by the Board, provide clarification about supervised experience required prior to certification, and revise reinstatement requirements. The number of clock hours of required training remains at 50, but more of those hours must be in subject's specific to sex offender assessment and treatment interventions.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

No changes were made since the Proposed Stage.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On January 8, 2002, the Board of Psychology adopted final amendments to 18 VAC 125-30-10 et seq., Regulations Governing the Practice of Psychology, in order to make the miscellaneous fees consistent with other professions regulated by the Board, provide clarification, and revise reinstatement requirements.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards. --The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*

3. *To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000A et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 2.2-4019 and § 2.2-4021 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 2.2-4020 and § 4021, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to §2.2-4020 and § 4021, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 2.2-4019 and § 2.2-4021 shall serve on a panel*

conducting formal proceedings pursuant to § 2.2-4020 and § 2.2-4021 to consider the same matter.

12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

§ 54.1-3605 mandates that the Board promulgate regulations for the voluntary certification of individuals who are exempt from certification under §54.1-3610 and for the mandatory certification of individuals who are not otherwise licensed.

§ 54.1-3605. Specific powers and duties of the Board - In addition to the powers granted in other provisions of this title, the Board shall have the following specific powers and duties:

1. *To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*
2. *To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*
3. *To designate specialties within the profession.*
4. *To issue a temporary license for such periods as the Board may prescribe to practice psychology to persons who are engaged in a residency or pursuant to subdivision 7 of § 54.1-3601.*
5. *To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers. In promulgating such regulations, the Board shall consider the standards recommended by the Advisory Committee on Certified Practices pursuant to 54.1-3610.*
6. *To administer the mandatory certification of sex offender treatment providers for those professionals who are otherwise exempt from licensure under subdivision 4 of §§ 54.1-3501, 54.1-3601 or § 54.1-3701 and to promulgate regulations governing such mandatory certification. The regulations shall include provisions for fees for application processing, certification qualifications, certification issuance and renewal and disciplinary action.*

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The Board of Psychology is charged with issuing certificates and regulating the practice of sex offender treatment providers. As the regulating agency, the Board has the duty to protect the public by establishing qualifications and requirements for certification that are necessary to ensure the competence and integrity of certificate holders and by taking disciplinary action for violations to applicable law and regulations. Regulations are the mechanisms by which the Board sets forth qualifications and requirements for certification, and standards of professional conduct that provide the basis for disciplinary action. The Board considers the problems the regulations are intended to address, and utilizes professional expertise, review of requirements of other states and national associations, historical information and public comment to determine minimal requirements that will ensure competency of its licensees and protect the public health, safety and welfare.

Although the Board has determined that the regulations are generally clear and easily understandable, it has identified several areas where unnecessary or outdated language needs to be rescinded, and several areas where new language is needed for clarification or improved consistency with its other regulations.

Specifically, the Board is amending regulation to redistribute the required coursework necessary for entry-level licensure. This redistribution will provide a greater emphasis on sex offender assessment and treatment interventions. Public reliance on the professional judgment of sex offender treatment providers to evaluate the ability of an offender to live and function safely in the community makes this greater emphasis on core sex offender assessment and treatment interventions essential to protect the health, safety and welfare of Virginia's citizens.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The Board is recommending amendments to its regulations for the certification of sex offender treatment providers in order to update and clarify the regulations. The requirement of 50 clock hours of training would be redistributed among the five subject areas in recognition of the fact that some subjects are more essential and courses more available than others. Amendments to fees are recommended for consistency with the Department's *Principles for Fee Development*, which have already been applied and are in effect for other professions regulated under the Board.

The Board has proposed to remove all references to the outdated waiver of the supervision requirement and to include language to specify that no supervision will be accepted without prior registration of the supervision contract. However, the Board will propose accepting verification of experience completed during the effective period of prior regulations, provided it met those regulations.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1) The primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions:

Since the public often relies on the professional judgment of a sex offender treatment provider to evaluate the ability of an offender to live and function safely in the community, the redistribution of required coursework to provide a greater emphasis on sex offender assessment and treatment interventions will be advantageous to the public. There are no disadvantages to the public or to individual businesses, which are not affected by these regulations.

2) The primary advantages and disadvantages to the agency or the Commonwealth:

There are no discernable advantages or disadvantages to the agency or the Commonwealth. The fee structure set in regulation is intended to ensure that costs related to specific activities are borne by the applicants or certificate holders. Agencies of the Commonwealth that offer sex offender assessment and treatment may benefit from certified providers who have more specific training for their job.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Proposed amended regulations were posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and a Notice of Comment sent to persons on the PPG mailing list for the board. Public comment was received until December 21, 2001. During the 60-day comment period, no comments were received from members of the public. A public hearing was also held at the Board's Office, Department of Health Professions, 6606 West Broad Street, Richmond Virginia on Friday, October 26, 2001 to receive public comment on the Board's proposal to establish qualifications for licensure and renewal standards of practice for certified sex offender

treatment professionals. No members of the public were present, thus no public comments were received.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 125-30-10. Definitions.

An amendment to the definition of "supervisor" is recommended to change the names of "Licensed Professional Counselors" and "Marriage and Family Therapists and Substance Abuse Professionals" to the "Board of Counseling" as it is now in statute. References to that board in other sections of the regulations will also be amended.

18 VAC 125-30-20. Fees.

Amendments are proposed to provide fees that are consistent with the "Principles for Fee Development" approved for all regulations within the Department. Fees for adding or changing registration of a supervisor, for late renewal, and for reinstatement following revocation or suspension will be added for consistency with other professions regulated under the Board.

The Board would like to propose that fees which are generic to all professions such as a duplicate certificate, verifying a certificate to another jurisdiction and for returned checks be changed to conform with the fees of other boards. This will lower the duplicate certificate fee from \$10 to \$5 and increase the returned check fee from \$15 to \$25. The Board would also like to establish a new fee of \$500 for reinstatement of a certificate that has been revoked or suspended following disciplinary action. This is the same fee established for licensed psychologists and for all categories of regulants under the Board. It is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.

No change is proposed for the renewal fee, application fee, or registration of supervision fee, which are currently in line with the agency's *Principles* to establish this fee. For clarification, the Board will propose changing the name of the application fee to "Application Processing and Initial Certification."

The Board would like to establish a reduced fee for registration of additional supervisors, as it has done in its other regulations. Since the education component would already have been reviewed for the first registration, this fee would be half of the initial \$50 registration fee.

One of the goals of the agency's *Principles for Fee Development* was to provide a basis for standardizing the late renewal and reinstatement processes for all categories of licensure and certification, which vary widely among boards. In April 2000, the Board amended its processes for psychologist late renewal to provide for a penalty fee within one renewal period and a reinstatement process for licenses that have lapsed more than one renewal period. Currently, sex

offender treatment providers must pay cumulative renewal and reinstatement fees for each year the certificate has lapsed. The Board would like to amend this process to make it conform to the process established for psychologists in accordance with the *Principles for Fee Development*. This would establish a late penalty of 35% of the renewal fee (\$25) for licenses lapsed less than one year, and a reinstatement fee of \$125 (\$50 review of reinstatement application plus ½ of the annual renewal fee plus the \$25 penalty for late renewal).

18 VAC 125-30-30. Prerequisites to certification.

Amendments recommended include: a) deletion of subsection A, as unnecessary language; and b) addition of the word "licensed" in subsection B3 c, to require "reference letters from three licensed health care professionals."

18 VAC 125-30-40. Educational requirements.

Amendments are recommended to redistribute the 50 clock hours of training acceptable to the Board from 10 hours in each area to a variable number, depending on the essential nature of the subject and the availability of the courses. Training in sex offender assessment and sex offender treatment interventions would require 15 hours in each area; in etiology/developmental issues of sex offense behavior, 10 hours would be required; and in criminal justice and legal issues and program evaluation, treatment efficacy and issues related to recidivism, 5 hours in each area would be required. The total of 50 hours would not be changed. Also, the Board recommends clarification that recidivism refers to sex offenders.

18 VAC 125-30-60. Supervision requirement.

The recommendation is to combine this section with section 50, which states the experience requirements, including supervision. The current regulation applies to anyone getting his or her supervised experience after August 6, 1998, so that phrase may be eliminated. In subsection C, an amendment is suggested to clarify that supervised experience obtained in Virginia without prior written board approval will not be accepted for certification. (A similar requirement already exists for other persons licensed by the Board.)

18 VAC 125-30-80. Annual renewal of certificate.

A requirement should be added for consistency with other regulated professionals requiring them to notify the board within 60 days of a change of address.

18 VAC 125-30-90. Reinstatement.

The requirements for reinstatement of a lapsed license need to be amended to require reinstatement after a certificate has been lapsed for one year and to add a requirement for verification of licensure or certification in any other jurisdiction subsequent to initial certification by the Board. The changes are recommended for consistency with the Principles for Fee Development and with other regulations under this board.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability and no impact on disposable family income.